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9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
12

13 **ADAM RICHARDS, et al.,**

14 Plaintiffs,

15 v.

16 **GAVIN NEWSOM, in his official**  
17 **capacity as Governor of California, et**  
18 **al.,**

19 Defendants.

Case No.: 8:23-cv-02413 JVS (KESx)

**DEFENDANTS' OPPOSITION TO**  
**PLAINTIFFS' NOTICE OF EX**  
**PARTE APPLICATION AND**  
**APPLICATION FOR**  
**TEMPORARY RESTRAINING**  
**ORDER AND ISSUANCE OF**  
**PRELIMINARY INJUNCTION**

Judge: Hon. James V. Selna

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27 <sup>1</sup> Defendants specially appear for the sole purpose of responding to Plaintiffs'  
28 Ex Parte Application for a Temporary Restraining Order and Issuance of  
Preliminary Injunction.

## OPPOSITION

2 Yesterday evening<sup>2</sup>—less than 24 hours before the start of the Christmas  
3 holiday weekend—Plaintiffs informed attorneys in the Office of the Attorney  
4 General, California Department of Justice, that they would be moving the Court ex  
5 parte for an emergency temporary restraining order and issuance of a preliminary  
6 injunction to enjoin a law that was enacted more than a year ago. Plaintiffs seek an  
7 injunction against Senate Bill No. 1384’s requirement that licensed firearm dealers  
8 have a digital video surveillance system on their business premises; that  
9 requirement was signed into law on September 30, 2022, with an effective date  
10 fifteen months later, on January 1, 2024.<sup>3</sup> Plaintiffs’ unexplained and unreasonable  
11 delay of more than a year to seek relief belies any claim of exigency, demonstrates  
12 an absence of irreparable harm, and undoubtedly prejudices Defendants. Thus,  
13 summary denial of Plaintiffs’ request is warranted.

14 Courts routinely deny TRO and preliminary injunction requests where the  
15 moving party has unreasonably and inexplicably delayed filing such a request for  
16 reasons that include the doctrine of laches, failure to demonstrate an imminent  
17 irreparable harm, or prejudice against the defendant. *E.g., Apache Survival Coal. v.*  
18 *United States*, 118 F.3d 663 (9th Cir. 1997); *Ariz. Libertarian Party v. Reagan*, 189  
19 F. Supp. 3d 920 (D. Ariz. 2016); *Labrada v. Deutsche Bank Nat. Tr. Co.*, 2010 WL  
20 3911492 (C.D. Cal. Oct. 4, 2010); *Burrows v. Onewest Bank*, 2012 WL 12882754,  
21 at \*2 (N.D. Cal. Apr. 5, 2012). As one court explained, denying such relief is  
22 appropriate where “plaintiff offers no explanation for its delay in seeking a  
23 temporary restraining order for over a year and a half thereafter, and plaintiff has

<sup>3</sup> See 2021 California Senate Bill No. 1384, California 2021-2022 Regular Session, available at [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=202120220SB1384](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB1384).

1 made no showing to suggest that it could not have sought relief by motion for  
 2 preliminary injunction at an earlier date[.]” *PTG, Inc. v. Reptilian Nation Expo*,  
 3 2023 WL 3582131, at \*2 (E.D. Cal. May 22, 2023) (internal quotation marks  
 4 omitted).

5 Here, Plaintiffs filed this lawsuit and sought emergency preliminary injunctive  
 6 relief ten days before SB 1384 goes into effect and on the eve of the Christmas and  
 7 New Year’s holidays. Courts have denied such relief where the delay is far less  
 8 than the nearly fifteen months Plaintiffs have waited here. *E.g., Martia v.*  
 9 *Specialized Loan Servicing, LLC*, 2018 WL 7377936, at \*1 (C.D. Cal. Oct. 24,  
 10 2018) (seven months); *InfoKorea, Inc. v. MBC Am. Holdings, Inc.*, 2016 WL  
 11 9459289, at \*2 (C.D. Cal. Aug. 31, 2016) (three months); *Occupy Sacramento v.*  
 12 *City of Sacramento*, 2011 WL 5374748, at \*4 (E.D. Cal. Nov. 4, 2011) (twenty-five  
 13 days); *Farmers Ins. Exch. v. Steele Ins. Agency, Inc.*, 2013 WL 1819988, at \*7  
 14 (E.D. Cal. Apr. 30, 2013) (six months). Plaintiffs provide no explanation for delay  
 15 here, nor do they explain why they could not have sought this relief on a non-  
 16 emergency basis while providing Defendants with sufficient time to respond. In  
 17 short, this delay belies any notion that relief is needed on an “emergency basis.”  
 18 *Cf. L.R. 77-1* (outlining procedures for “Emergency Matters”).

19 Furthermore, this delay undoubtedly prejudices Defendants and  
 20 inconveniences the Court in its “administration of justice.” *Ariz. Libertarian Party*,  
 21 189 F. Supp. 3d at 924. Plaintiffs’ ex parte request raises questions of law under  
 22 the First, Second, Fourth, and Fourteenth Amendments to the U.S. Constitution, as  
 23 well as provisions of the California Constitution. The request is supported by  
 24 purported factual statements made in at least ten declarations and an underlying  
 25 Complaint consisting of 496 paragraphs and 127 pages. Plaintiffs presumably have  
 26 been preparing these voluminous papers for many months, if not longer. And, by  
 27 filing the request for injunctive relief less than two weeks before the challenged law  
 28 goes into effect, and on the eve of two federal holidays, Plaintiffs have afforded

1 Defendants little time to prepare a defense and the Court little time to consider the  
 2 arguments of the parties and issue a measured and instructive ruling. As one court  
 3 explained in a similar situation,

4 By waiting until the eleventh hour to seek injunctive relief, Plaintiffs  
 5 essentially preclude Defendants from having a meaningful opportunity to  
 6 be heard. Whether the delay was the result of a litigation tactic or  
 7 occurred for other reasons, the court has no knowledge. What is true,  
 however, is that absent a sound reason for the delay, due process  
 concerns favor a full and fair airing of the positions of the parties.

8 *SST Recs., Inc. v. Garfield*, 2013 WL 4039805, at \*2 (C.D. Cal. Aug. 7, 2013). The  
 9 doctrine of laches is designed to protect against this precise type of prejudice.  
 10 *Apache Survival Coal.*, 118 F.3d at 665-66; *Ariz. Libertarian Party*, 189 F. Supp.  
 11 3d at 924.

12 Plaintiffs' dilatory behavior stands in sharp contrast to the diligence exercised  
 13 by other plaintiffs seeking to enjoin California legislation related to firearms. For  
 14 example, mere days after Senate Bill No. 2—a law that *inter alia* restricts the carry  
 15 of firearms in several designated locations—was signed into law, the plaintiffs in  
 16 *May v. Bonta*, C.D. Cal. No. 8:23-cv-01696 CJC (ADSx), and *Carralero v. Bonta*,  
 17 C.D. Cal. No. 8:23-cv-01798 CJC (ADSx), filed suit and immediately moved the  
 18 court for a preliminary injunction, well before that law went into effect. Another  
 19 example is *Junior Sports Magazines, Inc. v. Bonta*, C.D. Cal. No. 2:22-cv-04663-  
 20 CAS, in which the plaintiffs (represented by the same counsel as here) sought a  
 21 preliminary injunction a mere three weeks after the law they challenged—AB 2571,  
 22 which *inter alia* restricts marketing and advertising of firearms and related products  
 23 directed at minors—was signed by the governor.

24 Based on Plaintiffs' long, unreasonable, and inexplicable delay, the Court  
 25 should deny not only their request for TRO but also their request for a preliminary  
 26 injunction. Courts have time and again found such delays warrant denials of  
 27 preliminary injunctions under the doctrine of laches and also because they  
 28 demonstrate the absence of the kind of irreparable harm required to support a

1 preliminary injunction. *E.g., Apache Survival Coal.*, 118 F.3d at 665-66; *Ctr. for*  
 2 *Food Safety v. Schafer*, 2010 WL 964017, at \*4 (N.D. Cal. Mar. 16, 2010); *Reno-*  
 3 *Sparks Indian Colony v. Haaland*, 2023 WL 3613201, at \*6 n.5 (D. Nev. Mar. 23,  
 4 2023). “Laches—unreasonable and prejudicial delay—requires denial of injunctive  
 5 relief, including preliminary relief.” *Ariz. Pub. Integrity All. Inc. v. Bennett*, 2014  
 6 WL 3715130, at \*2 (D. Ariz. June 23, 2014). And, a ““long delay before seeking a  
 7 preliminary injunction implies a lack of urgency and irreparable harm.”” *Miller for*  
 8 *& on Behalf of N.L.R.B. v. California Pac. Med. Ctr.*, 991 F.2d 536, 544 (9th Cir.  
 9 1993) (quoting *Oakland Tribune, Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1377  
 10 (9th Cir. 1985); *see also Quince Orchard Valley Citizens Ass’n, Inc. v. Hodel*, 872  
 11 F.2d 75, 80 (4th Cir. 1989) (““Although a particular period of delay may not rise to  
 12 the level of laches and thereby bar a permanent injunction, it may still indicate an  
 13 absence of the kind of irreparable harm required to support a preliminary  
 14 injunction.”” (quoting *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir.  
 15 1985)). Those principles apply here: laches stands as a complete bar to Plaintiffs’  
 16 preliminary injunction request; and the long and unexplained delay demonstrates a  
 17 failure to meet the irreparable harm element required for issuance of a preliminary  
 18 injunction.

19 **CONCLUSION**

20 The Court should deny Plaintiffs’ Ex Parte Application and Application for  
 21 Temporary Restraining Order and Issuance of Preliminary Injunction.

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1 Dated: December 22, 2023

Respectfully submitted,

2 ROB BONTA  
3 Attorney General of California  
4 MARK BECKINGTON  
5 Supervising Deputy Attorney General

6 *s/ Todd Grabarsky*  
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9 Attorneys for California Governor  
10 Gavin Newsom and Attorney General  
11 Rob Bonta in their official capacities

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## **CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Defendants Governor Gavin Newsom and Attorney General Rob Bonta, in their official capacities, certifies that this brief contains 1,286 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 22, 2023

Respectfully submitted,

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s/ Todd Grabarsky  
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Rob Bonta in their official capacities

## CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2023, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: December 22, 2023 /s/ Todd Grabarsky  
TODD GRABARSKY